

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
2002 Biennial Regulatory Review – Review of the	)	MB Docket No. 02-277
Commission’s Broadcast Ownership Rules and	)	
Other Rules Adopted Pursuant to Section 202 of	)	
the Telecommunications Act of 1996	)	
	)	
Cross-Ownership of Broadcast Stations and	)	MM Docket No. 01-235
Newspapers	)	
	)	
Rules and Policies Concerning Multiple	)	MM Docket No. 01-317
Ownership of Radio Broadcast Stations in	)	
Local Markets	)	
	)	
Definition of Radio Markets	)	MM Docket No. 00-244

**PETITION FOR RECONSIDERATION OF NATIONAL ORGANIZATION FOR  
WOMEN**

Pursuant to Section 1.429 of the Commission’s Rules, the National Organization for Women (“NOW”), by its attorneys, the Institute for Public Representation (“IPR”), respectfully asks the Commission to reconsider its Order in the above-captioned proceeding.

NOW previously filed comments urging the Commission to promote ownership opportunities for women, minorities and small businesses by maintaining or expanding existing media ownership limits. Unfortunately, the Commission ignored NOW’s comments and relaxed its ownership rules to allow substantial ownership consolidation contrary to the public interest. Such consolidation will further restrict opportunities for minorities and women to own broadcast stations. Therefore, NOW requests that the Commission analyze the impact of its rule changes on opportunities for women and minorities to own broadcast stations and to revise the rules or take other action in this proceeding to ensure that these opportunities are not diminished.

**I. THE COMMISSION ARBITRARILY AND CAPRICIOUSLY  
FAILED TO CONSIDER WHETHER THE RULES WERE  
NECESSARY TO PROMOTE DIVERSITY**

The Order identifies five types of diversity that are pertinent to media ownership policy: “viewpoint, outlet, program, source and minority and female ownership diversity.”<sup>1</sup> Moreover, it reaffirms that encouraging minority and female ownership is an important Commission objective.<sup>2</sup> The order then analyzes whether the existing ownership rules are necessary to promote viewpoint diversity,<sup>3</sup> outlet diversity,<sup>4</sup> and program diversity.<sup>5</sup> However, it never assesses whether the existing rules are necessary to promote minority and female diversity.

The Order never cites NOW’s comments or *ex parte* letters which explained that minorities and women are drastically underrepresented in station ownership. Nor does the Commission refer to data available on its website showing that of the 8,751 stations filing Ownership Form 323 or 323-E in 2001, minorities held majority voting interests in only 303 stations (3.46%), while women held majority voting interests in only 380 stations (4.34%).<sup>6</sup> In

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<sup>1</sup> Order at ¶ 18.

<sup>2</sup> *Id.* at ¶ 46.

<sup>3</sup> For example, the Commission finds that although multiple media owners are more likely to present divergent viewpoints, the local television rule is not necessary to promote diversity goals since media other than television broadcast stations contribute to viewpoint diversity in local markets. *Id.* at ¶ 171. For local radio, the Commission acknowledges that viewpoint diversity is essential, but that it is provided by other forms of media. *Id.* at ¶ 305. However, the Commission also acknowledges that since radio is a less expensive means of entry into the media marketplace, new entrants such as small businesses, women, minorities, and other entrepreneurs seeking to meet a market demand or provide programming to underserved communities will promote viewpoint diversity. *Id.* at ¶ 306. Paradoxically, the Commission further recognizes that “virtually all available radio spectrum has been licensed. Radio broadcasting is thus a closed entry market.” *Id.* at ¶288.

<sup>4</sup> *See, e.g., Id.* at ¶¶ 38-41.

<sup>5</sup> *See, e.g., Id.* at ¶¶ 307-15. The Order does not consider the impact of the rules on source diversity because, unlike promoting ownership by minority and women, it concludes the source diversity is not an objective of the rules. *Id.* at 42-45.

<sup>6</sup> *See* Female/Minority Broadcast Ownership Data 2001, available at <http://www.fcc.gov/ownership/data.html>. The Commission has not released any additional data on minority ownership since the 2001 data was made available. *See also* Reply Comments of

addition to neglecting this data, the Commission fails to address the facts and analysis presented by NOW and others showing how increased concentration will negatively impact the already limited extent of minority and female ownership.<sup>7</sup> It is arbitrary and capricious for the Commission to fail to consider whether the rules are necessary to achieve this important goal.

**A. A Future Rulemaking is Not Sufficient**

The Order does state that the Commission will issue a Notice of Proposed Rulemaking to address proposals made by MMTC.<sup>8</sup> While laudable, the promise to investigate these questions in the future is not a substitute for reviewing the impact of the former and new rules in this proceeding. Even assuming that the Commission in fact initiates and completes a new rulemaking proceeding, by that time, few if any ownership opportunities will be left for minorities and women.

Moreover, the Commission may never complete such a proceeding. The Order mentions that the Commission previously issued an NPRM in 1995 to explore ways to provide greater opportunities for minorities and women to enter the mass media industry.<sup>9</sup> Although many parties filed comments presenting numerous constructive proposals,<sup>10</sup> the Commission never adopted any of their proposals except the proposal amend the ownership reporting forms.<sup>11</sup>

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Diversity and Competition Supporters, filed February 3, 2003 at 7 n. 12, reiterating the released Ownership Form statistics from the FCC website and noting that out of over 14,000 stations, only a mere 8,751 filed the Ownership Forms in 1991. *Id.*

<sup>7</sup> See NOW comments at 4-5; UCC comments at 18-19. The Minority Media Telecommunications Council (“MMTC”) also explained how specific forms of consolidation impede minority ownership resulting in the need for the Commission to adopt countervailing measures. See Comments of Diversity and Competition Supporters at 35-36.

<sup>8</sup> See Comments of Diversity and Competition Supporters at 49-50.

<sup>9</sup> *Id.* at ¶ 46 & n. 68, citing *Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities*, 10 FCC Rcd 27888 (1995).

<sup>10</sup> See, e.g., Comments of Black Citizens for a Fair Media *et al.* at 45 (filed May 17, 1995) (proposing to increase minority and female owners’ access to capital by applying a carefully structured incubator program); Comments of Minority Media and Telecommunications Council

The Order also mentions that the Commission issued an NOI in 1996 seeking comment on market entry barriers for small businesses,<sup>12</sup> as well as commissioned five studies and held a public forum on this topic in 2000.<sup>13</sup> Yet, the Commission has not taken any action to address the well-documented market entry barriers faced by minorities and women, and instead asserts that additional evidence is necessary before reaching conclusions.<sup>14</sup>

Since eight years have passed since the Commission initiated its still open inquiry on minority and female ownership, and the Commission has still not taken any action to further minority and female ownership of broadcast stations, NOW has no reason to believe that launching yet another proceeding has any greater likelihood of achieving meaningful progress.

**B. The lack of minority and women owned stations will not be remedied by permitting the transfer of grandfathered combinations to small businesses**

The Order does adopt a limited exception to its policy of prohibiting the transfer of existing ownership combinations in violation of the new rules to permit the sale to small businesses, noting that the benefits of greater participation by small businesses, including those owned by minorities and women, outweigh the harms of allowing above-cap combinations.<sup>15</sup> Adoption of this exception is not a substitute for a careful review of the impact of the former and

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at 26-29 (filed May 17, 1995)(proposing to create a Minority Media Ownership Trust, to create the American Communications Investment Bank to provide minorities with capital, and accelerate the application process for sales to minority owners).

<sup>11</sup> That NPRM proposed initiatives to increase access to capital, incubator programs, attribution rules, tax certificates, other initiatives to facilitate minority and female ownership, and data collection methods.

<sup>12</sup> Order at ¶ 46 & n. 69 citing *Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses*, 11 FCC Rcd 6280 (1996). See also *Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses*, Report, 12 FCC Rcd 16802 (1997).

<sup>13</sup> Order at ¶ 46 & n. 70.

<sup>14</sup> *Id.* at n. 70.

<sup>15</sup> Order at ¶ 51.

new rules on ownership opportunities for minorities and women. Nor is it in fact likely to significantly increase such opportunities for the following reasons.

First, the Order makes no finding about the number of grandfathered combinations except to state that most are likely to involve radio.<sup>16</sup> Second, companies with grandfathered combinations have significant advantages over other competitors.<sup>17</sup> It seems unlikely that companies with such advantages will voluntarily give them up by selling to small businesses.

Even if companies chose to sell grandfathered combinations, they can sell to any qualified small business, regardless of whether the small business is controlled by women or minorities. The Order cites no statistics on the number of qualified small businesses that are owned or controlled by women and minorities.<sup>18</sup> Moreover, it does not discuss whether small businesses controlled by women or minorities will be able to afford such combinations. It would surely be less expensive to buy individual stations rather than combinations.

Finally, even if grandfathered combinations are sold to minority or female small businesses, they can be resold as a unit to anyone in 3 years. This not only limits the benefit of

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<sup>16</sup> Order at ¶ 482.

<sup>17</sup> See Bill McConnell, *With Big Radio in its Sights, Congress Sees Ban as a Warning Against the Dangers of Consolidation*, Broadcasting & Cable, July 14, 2003, at 20, quoting industry participants' predictions that under the modified rules, companies with grandfathered combinations will be in advantageous positions while competitors will be unable to establish comparable combinations with the capacity to effectively compete.

<sup>18</sup> In fact, the Order does not have any idea of how many current licensees are considered small businesses. See e.g., Order at Appendix G ¶ 10 (stating that "An element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimates that follow of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. An additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.") (emphasis added).

minority and/or female ownership to the public, but also creates incentives for companies to arrange sham transfers.

## **CONCLUSION**

Promoting ownership opportunities for women, minorities, and small businesses is an important aspect of diversity, which is one of the objectives of ownership rules. At present, very few radio and television stations are owned by either minorities or women. Increased industry consolidation impedes the ability of minorities, women, and small businesses to enter the broadcasting industry, or if they already are in the industry, to compete against large group owners. Launching another inquiry and allowing grandfathered combinations to be transferred to small businesses will not result in any significant amount of minority or female ownership. Therefore, the Commission should reconsider its decision and either retain or strengthen existing media ownership limits or adopt alternative, concrete measures in this proceeding to preserve opportunities for minority and female ownership of broadcast stations.

Respectfully Submitted,

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Angela J. Campbell, Esq.  
Institute for Public Representation  
Georgetown University Law Center  
600 New Jersey Avenue, N.W.  
Washington, D.C. 20001  
(202) 662-9535

Karen Henein  
Graduate Fellow

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Counsel for National Organization for  
Women